

**Final Report: Zoning Strategies and Tools
For Regulation of Retail Uses**

**Government of the District of Columbia
Zoning Regulatory Review Project
Retail Working Group**

**Office of Planning
Development Review Division**

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Introduction:

The follow report outlines detailed recommendations in relation to the District of Columbia Zoning Regulatory Review Project's Retail Working Group. These recommendations are based on a series of public meetings, public response solicitations and staff research and analysis. The recommendations presented are intended to:

- Effectively address specific policies and action items of the District of Columbia Comprehensive Plan;
- Improve the clarity, relevance and ease of use of the Zoning Ordinance;
- Effectively address concerns identified by the working group;

All with respect to retail commerce as an important type of land use.

These recommendations will serve as the foundation for the preparation of regulations related to the District of Columbia's Zoning Ordinance. Final language will be based on the results of the work of the retail working group in combination with other related working groups.

Upon final implementation of these recommendations it is important to note that they will not represent changes to other existing regulatory systems (e.g.: Historic Preservation Districts), but only the standard zoning regulations. Upon completion, these new zoning regulations will continue to interact as the current standards do with respect to other related regulatory systems.

Format:

For ease of reference the recommendations have been presented in two sections:

- **Zoning Ordinance Related Recommendations** – recommendations that address specific zoning related matters.
- **Deferred Items for Future Working Groups and Policy Development** – general recommendations for further work that is retail use related, but that has more relevance in broader regulatory and fiscal land use policy, outside of the scope of zoning.

Within each recommendation section the information is presented in three parts:

- The specific recommendation is identified along with reference to associated ***Comprehensive Plan Policies or Action Items***;
- A further description of the recommendation and associated rationale, including a bulleted list of ***supporting working group and public feedback comments***;

- An overview of regulatory guidance that could be used when preparing final regulations. Where applicable example regulations or concepts have also been provided for clarity; and
- General comments identified by the Working Group upon presentation of the draft recommendations for their review and related dialogue.

Zoning Ordinance Related Recommendations

The following recommendations intend to identify areas for potential improvement to both the organization of the District of Columbia zoning ordinance and to the utilized regulatory tools. In many cases the recommendations are focused on ways the existing regulations can be improved and applied more comprehensively throughout the district. Some new tools have also been proposed for consideration.

Each recommendation is supported by the identification of relevant Comprehensive Plan Policy and Action Items in a separate table. The specific policy code or action code is identified along with the associated title clause (i.e.: Policy UD-3.1.7: Improving the Street Environment). For full text, reference can be made to the Comprehensive Plan.

Supporting Working Group and public feedback points are also identified. These points are provided as background regarding the need for, and development of the recommendation.

Recommendation 1: Focus on the regulation of Ground Floor Retail within the context of broader Commercial Corridor and District land use regulation. Focus on uses and development standards that make a good retail environment at the street level as opposed to general permission of uses by geographic area.

Supporting Policies and/or Action Items:
<i>Policy UD-3.1.7: Improving the Street Environment</i>
<i>Policy ED-3.1.1: Neighborhood Commercial Vitality</i>

1.1 Concept and Rationale:

Much of the Working Group conversation focused on the location of retail commerce within a commercial district and the dedicated street level retail space's relationship to the street. Both what uses occupy the retail space at street level, and how and where this space is placed and designed to interact with the street was considered vitally important to the success of a retail district.

It is therefore generally recommended that the composition of retail related regulations should be organized so as to ensure recognition of what happens at the **ground floor or street level** as paramount, within the context of broader and interrelated commercial area regulations.

Further to the discussions of the working group and review of some best practices (including recent District of Columbia regulatory development for Reservation 13, the Hill East District): focusing on the regulation of **Ground Floor Retail** within the context of other related regulations would be a consistent and effective approach regarding how to ensure successful commercial areas throughout the District.

Supporting Excerpts from Working Group and Public Feedback:

- *Through facilitated discussions with the Working Group, the focus of their feedback often related to what happens on the street level.*
- *We need to be able to 'nodify' retail uses in certain areas that have an imbalance of residential density relative to available commercial space.*
- *Consider requiring percentage of ground floor space be used for retail or food uses-not law firm lobbies, banks health facilities etc.*
- *Restrict the amount of blank ground-level street frontage-either walls or covered-over windows (CVS, law firms etc.)*

1.2 Regulatory Requirements:

The following should be included in the preparation of language related to Ground Floor Retail Uses within a commercial area regulatory section:

- Explanatory language establishing the need to regulate for ground floor retail uses and related development standards, within the context of broader commercial area regulations;
- A section defining what areas of a commercial district would be regulated as ground floor retail and associated maps. This section could also stipulate where ground floor retail might *not* be permitted, in order to facilitate retail nodes.
- A section addressing the permission and prohibition of specific ground floor retail uses; and
- A section addressing the regulation of development standards associated with ground floor retail.

Identified in the image below is an example of how the regulation of the location of required, permitted and prohibited Ground Floor Retail areas is being accomplished in the Hill East redevelopment plan and regulations. Commercial Districts could use a similar approach or simply require or prohibit types of retail depending on area needs and characteristics.

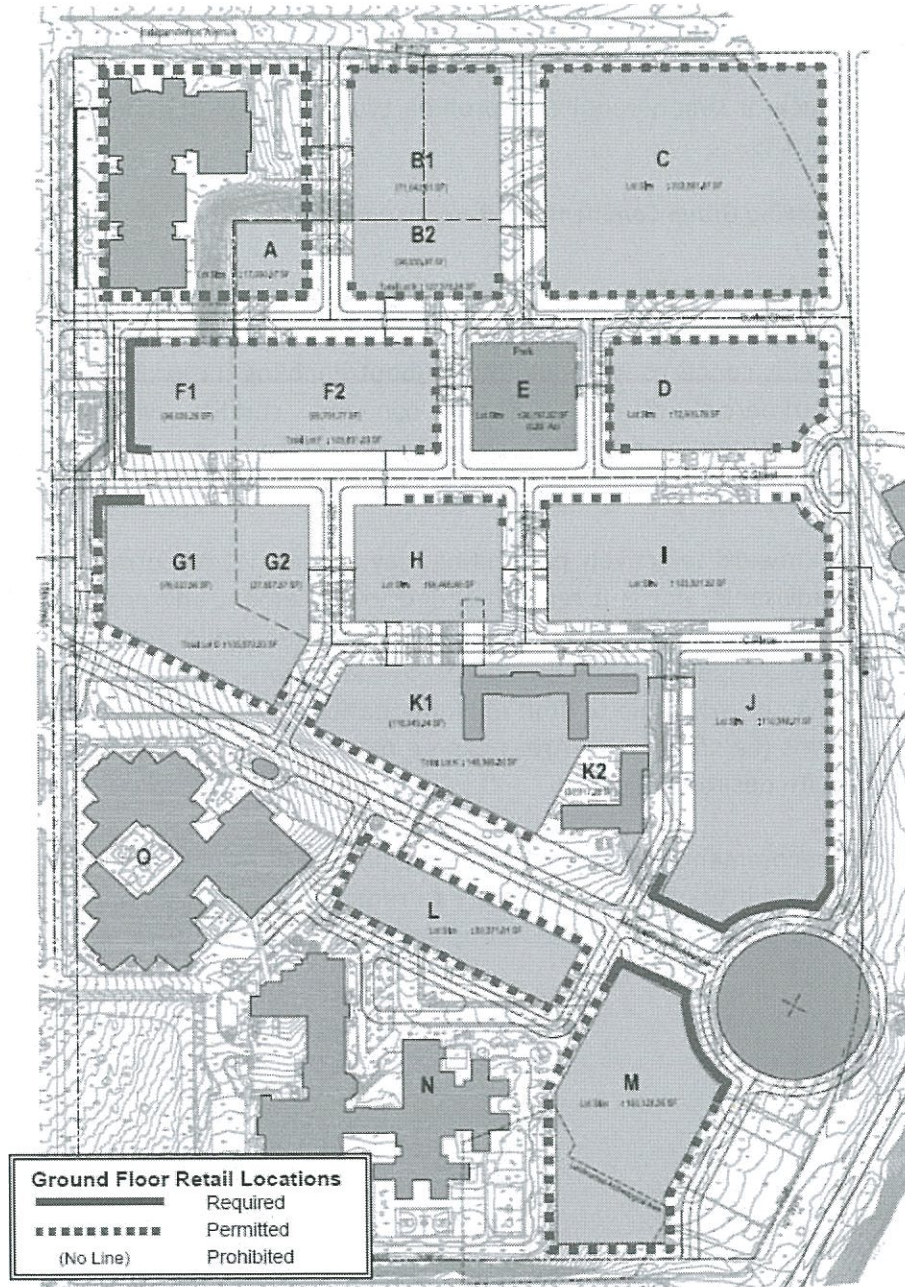
1.3 Working Group Comments on Recommendation:

Upon presentation of Recommendation 1.0 to the Working Group there was general consensus on the relevance of regulating retail from a 'ground floor' perspective. However, specific concerns were identified about enabling the prohibition of any retail within a commercial district. These concerns conflict with possible policy implementation programs related to commercial corridors; specifically the creation of 'retail nodes'.

The approach toward selectively prohibiting may or may not be correct. At this time, it may not be advisable, nor is it recommended to implement any prohibitions on retail uses in commercial areas on a comprehensive basis. Limited implementation of such a program, based on specific commercial area considerations, may however prove useful. If applied it may be advisable to limit implementation of such a tool to 'pilot' areas and to limited terms (i.e.: 5 years). Areas can be monitored to determine effectiveness in accordance with desired goals.

The general recommended approach to regulating retail as proposed does provide for flexibility. Should it be deemed necessary to remove prohibitions, minor modifications to the code and related maps would not be arduous.

Hill East Ground Floor Retail Map



Recommendation 2: Recognize the need for local regulations based on area characteristics – i.e. Neighborhood Commercial District, Downtown, Wisconsin Ave., Georgia Ave.

Supporting Policies and/or Action Items:
<i>Policy ED-3.1.1: Neighborhood Commercial Vitality</i>
<i>Policy ED-2.2.3: Neighborhood Shopping</i>
<i>Policy ED- 2.2.2: Downtown Shopping</i>

2.1 Concept and Rationale:

Through the general working group discussions, it became apparent that to be effective, retail-associated regulations must recognize the geography of different areas. Regulations need to be able to relate to their relative context – whether the defined area is a neighborhood commercial district or the downtown. This is currently achieved through the interrelationship between the base commercial zoning districts and the use of zoning overlays. As an alternative it would be more practical to simply recognize individual districts and regulate all associated local interests based on local geographic characteristics.

Writing a new zone in lieu of overlay would also allow for the ***maintenance of existing regulations*** that are utilized in existing overlays and would allow for better local planning based on area needs and markets. The use of such an approach should not necessarily pose additional administrative burden as many of the existing commercial areas of the city are already regulated through an overlay approach.

Application of such an approach would establish a framework that would also be most consistent with the Comprehensive Plan. Due to the varying nature of Commercial districts in terms of the population they may serve, or the population it may be desired that they serve, it is important that the final system be flexible in recognizing both possibilities. For example, certain commercial areas may serve vastly different target markets in terms of scale. The Downtown – a High Density Commercial area – serves a wide regional market; whereas Mount Pleasant – a Low Density Commercial area – serves a much more local market. The appropriate types of permitted uses and development standards would not necessarily be consistent between the different areas.

In addition, where we have two commercial areas that are of the same type – Mount Pleasant and Cleveland Park, both Low Density Commercial Areas – they may be dealing with different local market characteristics and/or problems. Even though they are the same type of area, they need to be able to permit or prohibit uses and establish development standards based on local conditions.

Further potential considerations and relevant reasoning for such a concept will be addressed through other recommendations.

Supporting Excerpts from Working Group and Public Feedback:

- *Address real contemporary issues – zoning should be flexible to shift quickly to address economic challenges – or otherwise.*
- *We need to make a distinction between new construction and other parts of the city where things are fixed; how we regulate should/will vary depending on the location. We should require retail in these districts and define what that means as well as what percentage should go where.*
- *Service a three to five minute driving radius.*
- *Remove necessity of driving to accomplish everyday tasks.*
- *Zoning should not be a barrier to facilitating Retail uses. It should be more positive force in achieving our desired ends and its purpose.*
- *Zoning should be more flexible to allow for modification based on current need when it is not achieving its goal.*
- *Zoning regulations must recognize the need for balance between local business and national chains.*
- *Need to build regulations consistent with Public Transportation and associated plans.*

2.2 Regulatory Requirements:

Some regulatory requirements that would be necessary to ensure viable application of such an approach to regulation include:

- Utilization of standard tools and ordinance organization between different districts; and
- Utilization of consistent language when defining uses and regulating development standards.

2.3 Working Group Comments on Recommendation:

The working group was generally supportive of the geographic specific approach to the regulation of retail uses and development standards. However, concerns were expressed that this is not necessarily an assurance of success.

Recognizing this change should be accomplished within the scope of wider commercial corridor planning. A more local approach to regulation of retail should not disregard wider retail markets, both within the district and regionally, when individual policies are developed. It is important that individual retail area regulations reflect a wider city strategy.

Maintaining common development standards and language for use regulations are an important step in assuring coordination. Common language and tools will allow for measurement, comparison and future retail strategy implementation that ensures recognition and co-ordination with surrounding retail districts.

Recommendation 3: Continue to utilize and further develop development standards which restrict the concentration of certain permitted uses.

Supporting Policies and/or Action Items:
<i>Action LU-2.3.A (b): Zoning Changes to Reduce Land Use Conflict in Residential Zones</i>
<i>Policy ED-2.2.4: Destination Retailing</i>
<i>Policy ED-2.2.5: Business Mix</i>
<i>Policy ED-3.1.1 Neighborhood Commercial Vitality</i>

3.1 Concept and Rationale:

Recognizing the proposed ability to regulate on a more local or geographic basis (as identified in Recommendation 2.0), it would be worthwhile to maintain and develop standards to restrict the concentration and location of certain permitted uses. Such regulations may be helpful in achieving the following policy goals:

- Achieving a balanced retail business mix;
- Helping to curtail rising rents associated with certain uses; and
- Ensuring that retail space is available to serve neighborhood resident needs.

Currently regulations that limit the concentration of certain uses do so through a frontage based restriction. Within the Neighborhood Commercial Overlay regulations of the District of Columbia Zoning Ordinance, designated districts may regulate a maximum amount of restaurant and related uses to 25% of the linear street frontage within a defined area.

Through the continued application of such ‘concentration-restrictions’ it may be worth further developing means of regulating use concentration based on *floor-space area* relative to the district within which the use exists, and *where* such uses may be permitted or restricted within the defined area.

Supporting Excerpts from Working Group and Public Feedback:

- *Restrict banks from corner locations in general, or at least in overlay districts such as Downtown Development, Woodley Park, Cleveland Park, Mt. Vernon Triangle etc.*
- *Encourage balance in the retail mix.*
- *Overlays might not be relevant now compared to when they were initiated. A regular review of their effectiveness should be performed. To adequately assess their impact they should be reviewed both during periods of rapid and slow economic growth.*
- *Review current limitations to ensure zoning is not an impediment to healthy and fledgling retail.*

3.2 Regulatory Requirements:

The continued application of use limitations should include the following requirements or considerations based on Working Group and Public Feedback:

- Effective application and enforcement of the limitations requires that more effort be placed on keeping information related to types of uses and the associated area that they occupy, and the actual baseline standard for the restriction (i.e.: total linear frontage within a defined district.)
- Consideration of how to deal fairly with applicants who are impacted by an application near the edge of a threshold. This could include situations where there is only a portion (i.e.: 5 %) of the restricted frontage available – but the desired frontage exceeds this amount. Possible solutions include:
 - The defined index could apply as a base-line only – not a strict standard. An applicant would therefore be able to occupy a space regardless of whether their proposed frontage or floor space can fit **entirely** within the allowable remaining index. For example, the remaining permitted frontage is 5 % and the applicant’s proposed frontage would represent 7% of the entire permitted frontage. The applicant would still be permitted, as the general overall goal of effectively restricting a maximum concentration would be achieved, without being punitive.
 - Preliminary certification of space availability related to a concentration-restricted use issued by the Zoning Administrator prior to execution of a leasing agreement. The certification would be valid for a certain time so as to not encumber the space with speculative inquiries.
- Restrictions on location and area would not apply to existing businesses that desire to expand the physical space of their existing businesses.
- Regular review of the use restrictions should be performed to evaluate the impact of the regulations toward intended goals. This could be accomplished through the establishment of sunset review language.

- Where review takes place, clear goals should be established (i.e.: reduced or maintained rental rates, balance of retail uses, vacancy rates, etc.). These criteria should form the basis of measuring the success of existing and any proposed use concentration restriction.
- Considerations should be made regarding regulating based on an area standard such as floor space as opposed to a linear standard.

3.3 Working Group Comments on Recommendation:

Dialogue with the working group throughout the meeting process did not result in a strong consensus regarding effectiveness of use concentration regulations. Although the application of the regulations may be effectively prohibiting the proliferation of certain uses it may also be overly restrictive as it may be resulting in unnecessary vacancies where space is available and desired by a certain tenant.

With the reality that these restrictions are already in place and that the zoning review process is not intended to focus on desired ends, it was recognized that the recommended improvements would be pragmatic.

Further to the regulation of use concentrations and other possible regulatory tools, the proposed use of floor space as the standard of measurement (instead of frontage) was recognized as good idea in theory, but hard to practically apply.

Recommendation 4: Utilize definitions for retail uses based on existing related regulatory and economic measurement systems to ensure ease of use and consistency in enforcement and compliance; and to allow for economic development planning. Establish additional guidelines for evaluation of use permission or special exception that focus on desired retail impacts.

Supporting Policies and/or Action Items:
<i>Action LU-2.3.A (b): Zoning Changes to Reduce Land Use Conflict in Residential Zones</i>

4.1 Concept and Rationale:

Definitions:

Through discussions with the Working Group the idea of using existing classification or regulatory systems was proposed as a means of establishing new definitions to be used in the Code. Research has indicated that consistent definitions between the zoning regulations and other related regulations (i.e.: Alcoholic Beverage Regulations) would represent a manner of ensuring consistency and clarity with respect to regulating towards certain desired intentions.

This approach would be consistent with the general intent of a Comprehensive Plan as a synthesis of a broad range of policy interests: i.e.: economic development policy, housing policy, land-use compatibility, etc. Utilizing definitions in a Zoning Ordinance (an implementation tool for a Comprehensive Plan) which correspond with higher level or other related regulations will build consistency with other public regulatory bodies and avoid gray areas where applicants find themselves having to comply with two separate standards.

This approach to establishing definitions in association with use permissions is also recommended by the American Planning Association (APA). The APA advocates for the utilization of nationally accepted definitions if available, and the use of federal, state or other relevant municipal definitions in a local zoning ordinance.

In relation to the North American Industry Classification System or NAICS – a system developed to classify businesses to allow for comparability – the Planners Dictionary specifically states that:

The NAICS can be used to develop various land-use categories and identify changes of use. The zoning ordinance could identify specific NAICS business sectors or sub-sectors as permitted uses in appropriate zones *and exclude them where not appropriate.**

Using a system – such as the NAICS – would also allow for measurement of performance of commercial districts in relation to economic development interests. This would be consistent with general methodology associated with **Retail Area Market Analysis**, which is based upon the NAICS. The system is also broad and thorough enough in nature that it tends to allow a broad range of retail uses based on the parent classification categories – not necessarily requiring that all possible desired use types be identified beyond the parent classes.

Evaluation of Retail Use Permission and Special Exceptions:

Although the use of common terms and definitions may be more thorough in recognition of potential uses there is always the probability of the need for further clarity in association with assessing the consistency of a proposed retail use. To assist in the evaluation of such an approach it would be advisable to develop criteria that could be applied in evaluating a proposed use – whether through permit review or through special exception. These criteria should be based on general retail policy goals and would *not* necessarily have to *all* be met in order to be deemed to be compliant. Examples *could* include the following:

- The use shall provide a good or service which generates sales tax.
- The use shall have no negative impact in terms of noise or odors on neighboring properties.
- The use shall be of the nature that involves the sale and purchase of goods or services on a regular basis which would therefore facilitate regular pedestrian traffic.

* A Planners Dictionary, Pg. 7, PAS Report Number 521/522, APA, 2004.

Supporting Excerpts from Working Group and Public Feedback:

- *Recognize classification systems that already exist to regulate business uses.*
- *NAICS code was introduced for possible guidance when discussing preferred retail types. Building code occupancy and alcohol/beverage control classifications were also suggested as relevant sources. Group members also suggested the use of other retail categories used in other cities.*
- *Businesses with different hours of operation – some day, some late night.*
- *Where definitions are used they should focus on the intent or goal of the regulation. Compliance should be based on criteria being met and not necessarily an absolute test.*
- *Protect the existing quality of life in residential neighborhoods: noise and safety.*

4.2 Regulatory Requirements and Example:

The following regulatory requirements should be kept in mind when establishing a revised system for permission and restriction of ground floor retail uses.

- The NAICS should be used to establish different categories of Ground Floor Retail uses.
- Exclusions or prohibitions should draw from relevant regulatory interests where such examples exist. I.E. Prohibitions on alcohol related uses and their associated impacts should defer to the District of Columbia Alcoholic Beverage Regulations and the definitions of specific types of establishments contained therein.
- Where no existing definition exists in relation to the potential impact that is trying to be addressed, language should be drafted which focuses on the regulatory intent of the definition, not simply a commonly understood term.
- Qualifications should still be required based on certain use types – i.e.: Fast Food Restaurants – as established in the existing ordinance.
- Where using regulations based on other regulatory or classification systems, the zoning ordinance must address the potential for updates of those other systems' definitions. Ultimately it must be ensured that the applied definition maintain consistency within desired goals of the zoning ordinance.

Provided below is a sample ground floor retail use regulatory section that could be incorporated into a commercial district regulatory section of the Zoning Ordinance.

Sample Ground Floor Retail Use Regulatory Section

1. The table identified in Section 6 identifies a comprehensive list of Ground Floor Retail Uses. A use is permitted by the chart when the letter “P” is set in the line opposite the designation of the use and prohibited where an “NP” is set in the line opposite the use designation. Where an identified use has a letter “Q” followed by a number or numbers the use shall be subject to the qualification or qualifications identified in Section 7.
2. Where a use is identified as prohibited this shall also apply to any accessory or secondary use of a Ground Floor Retail space, whether located on the ground floor or as a component of a contiguous space linked to the ground floor.
3. Any use not specifically identified within the Regulated Ground Floor Retail Use Table or inconsistent with the definition and associated uses shall be explicitly prohibited.
4. Where a potential Ground Floor Retail use is proposed and may be considered consistent with the general intent of maintaining active and vibrant ground floor retail spaces. But is not specifically identified within the permitted NAICS sections. It may be approved by Special Exception subject to the following evaluation criteria. Compliance with all criteria shall not be necessary for approval:
 - a) The use shall provide a good or service which generates sales tax.
 - b) The use shall have no negative impact in terms of noise or odors on neighboring properties.
 - c) The use shall be of the nature that involves the sale and purchase of goods or services on a regular basis which would therefore facilitate regular pedestrian traffic.
5. The North American Industry Classification System (NAICS) shall serve as the basis for the establishment of permitted use types and corresponding definitions. Where applicable more detailed definitions will be provided for clarity. The NAICS code shall serve as the basis of reference to the corresponding definitions. Identification of any NAICS code shall include all subordinate uses under the corresponding classification parent classification code identified, unless a specific sub-code is identified for purposes of prohibition.

6. Regulated Ground Floor Retail Use Table:

NAICS Use Code:	Use and Further Definition:	Permitted or Not Permitted:
Retail Trade		
441	Motor Vehicle and Parts Dealers	NP
442	Furniture and Home Furnishings	P
443	Electronics and Appliance Stores	P
444	Building Material and Garden Equipment and Supplies Dealers	P
445	Food and Beverage Stores	P
4453	Beer, Wine and Liquor Stores Beer, Wine and Liquor Stores shall include any off-premise retailer licensed to vend alcohol in accordance with Title 25-112 of the District of Columbia Official Code regarding Alcoholic Beverage Regulation.	NP
446	Health and Personal Care Stores	P
447	Gasoline Stations	P
448	Clothing and Clothing Accessories Store	P
451	Sporting Goods, Hobby, Book and Music Stores	P
452	General Merchandise Stores	P
453	Miscellaneous Store Retailers	P
4539	Other Miscellaneous Store Retailers	NP
45393	Manufactured (Mobile) Home Dealers	NP
45399	All Other Miscellaneous Store Retailers	NP
Finance and Insurance		
52211	Commercial Banking	Q-1
Real Estate and Rental and Leasing		
5322	Consumer Goods Rental	P
532299	All Other Consumer Goods Rental	NP
Accommodation and Food Services		
722	Food Services and Drinking Places	Q-2
7221	Full-Service Restaurant	Q-3
7222	Limited-Service Eating Places	Q-4
7223	Special Food Services	NP
7224	Drinking Places	Q-5
Other Services		
8112	Electronic and Precision Equipment Repair and Maintenance	P
8114	Personal and Household Goods Repair and Maintenance	P
8121	Personal Care Services	P
81219	Other Personal Care Services	NP
8123	Dry-cleaning and Laundry Services	P
81233	Linen and Uniform Supply	NP
8129	Other Personal Services	P
81293	Parking Lots and Garages	NP
81299	All Other Personal Services	NP

7. Qualifications:

1. Commercial Banking establishments shall be permitted within the defined Ground Floor Retail Area provided:
 - a) they are not located in the following defined geographic areas:
 - Example Area A
 - Example Area B
 - b) They occupy no more than a total gross floor area of 5,000 square feet.
 2. All Food Services and Drinking Places corresponding with NAICS Code 722 shall be permitted subject to the following limitations:
 - a) These uses shall occupy no more than 25 % of the linear street frontage within the defined permitted Ground Floor Retail area.
 3. Full-Service Restaurant shall be permitted subject to the following limitations:
 - a) A restaurant that desires to serve alcohol shall be limited to an (R) license as required under § 25-113.
 - b) For purposes of this regulation a restaurant shall follow the same definition utilized in § 25 of the District of Columbia Official Code.
 4. Limited-Service Eating Places shall be permitted to the following limitations subject to the following limitations:
 - a) They shall not be permitted to sell alcohol. Alcohol shall have the same definition as that used in § 25 District of Columbia Official Code.
 5. Drinking Places shall be permitted subject to the following restrictions:
 - a) A Drinking Place shall not include a Nightclub as defined in § 25 of the District of Columbia Official Code.
 - b) A Drinking Place shall include a Tavern as defined and licensed under § 25 of the district of Columbia Official Code.
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4.3 Working Group Comments on Recommendation:

The working group commented that where other established definitions exist and are applicable it would make good sense to use them. Specific concerns were expressed regarding the potential for updates of the definitions wherefrom they are drawn, whether from other regulations or classification systems. Recommendations we're made that where definitions are utilized from alternative regulations or systems, that their meaning be established based on the date of adoption in the ordinance.

Staff would recommend that the Office of Attorney General and the Office of Zoning advise on how to ensure effective application of definitions from other statutes, regulations, or systems. Maintaining consistent and effective application of the zoning regulations toward desired goals, if and when any changes to definitions are made, should be of paramount importance.

Important to note were concerns that were raised regarding the impact of any proposed use permissions through the zoning update on existing alternate regulatory requirements outside the scope of zoning (specifically Alcoholic Beverage Commission moratoriums). Within the context of the zoning review and any associated changes, there would be no impact on existing related systems of regulation. Any changes would supplant only the existing zoning regulations, where applicable.

Recommendation 5: Ensure newly developed space maintains minimum ceiling height standards consistent with national and generally preferable retail requirements. Ensure that required minimums allow for relative allowances to final overall building height and within broader height guidance requirements.

Supporting Policies and/or Action Items:
<i>Policy ED- 2.2.2: Downtown Shopping</i>
<i>Action ED-2.2.B: Retail Ceiling Heights</i>

5.1 Concept and Rationale:

Through discussions with the working group, general feedback provided through the District of Columbia Zoning Update web-site and direct information solicitations, it became apparent that the 14 foot minimum clear ceiling height standard utilized in some existing overlays should be maintained and applied through other individual commercial area regulations. Restriction of the minimum first floor ceiling height should also have a compensating allowance related to the overall building height, where applicable.

Regulations should consider a height allowance where additional first floor ceiling height (beyond the 14 foot minimum standard) should be permitted. This can be achieved through additional building height allowances, within established overall maximum standards. Utilization of this approach will ensure consistent development of retail space which meets the needs of retail tenants who may have special requirements for floor height allowances (i.e.: grocery stores).

Supporting Excerpts from Working Group and Public Feedback:

- *Current 5 ft. compensation for ceiling heights is the right strategy. 14 ft. clear is a good height.*
- *Ground level should be built properly for retail.*
- *Require 14 ft. ceiling heights in all neighborhood districts for new development and grant extra height as matter-or-right if such ground floor height increase will cause the loss of a floor under the height limit for that zone.*
- *Zoning should not be a barrier to facilitating Retail uses. It should be more positive force in achieving our desired ends and its purpose.*

5.2 Regulatory Requirements:

The following regulatory requirements should be utilized with respect to final language related to retail ceiling heights:

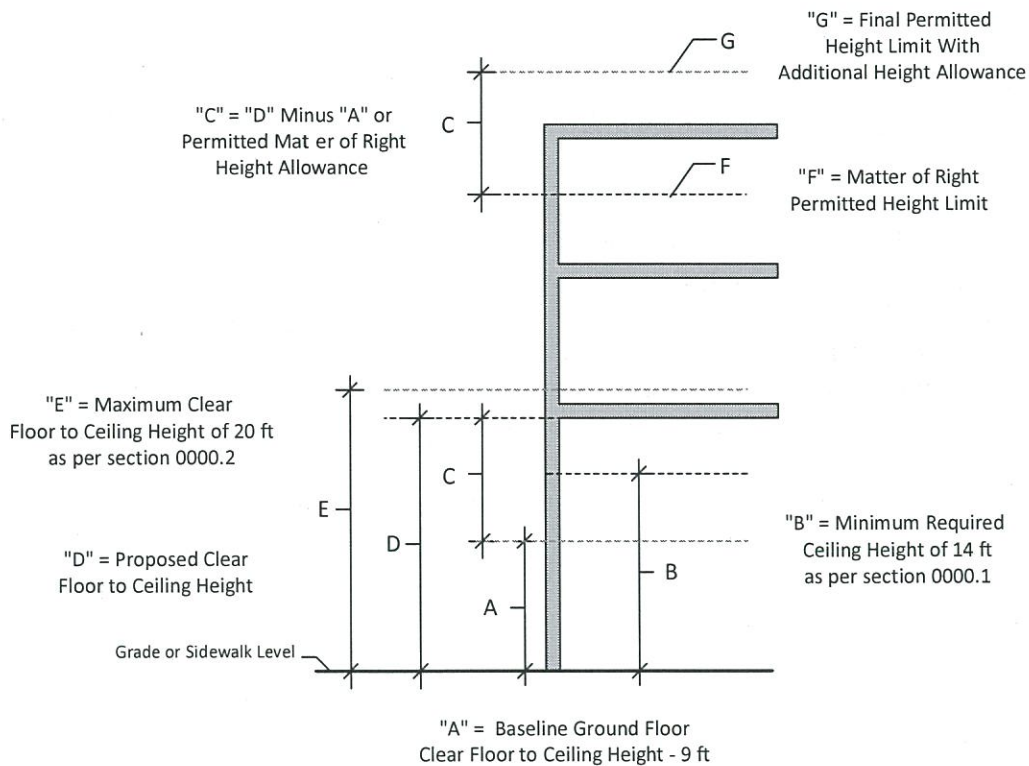
- A 14 foot clear **minimum** height requirement from floor to ceiling of the first story of a building located and fronting on a designated required Ground Floor Retail Area should be the minimum defined standard.
- The Ground Floor restriction should provide a compensation clause for the additional final building height – as permitted under the Height Act – to compensate for the potential loss in gross leasable floor space on the upper story.
- The compensation clause for final building height should be relative to the amount by which the minimum clear floor to ceiling height exceeds the existing one-story first floor standard of 9 feet – up to a specified maximum based on area considerations.
- An illustrative diagram would also be useful to ensure compliance and clarity regarding the clause.

The following language and figure provides an example based on existing language and the proposed modifications:

Revised Minimum Ceiling Height Restriction Language

- 0000.1 The ground floor level of each building or building addition shall have a uniform minimum clear floor to ceiling height of fourteen feet (14 ft.)
- 0000.2 Buildings subject to § 0000.1 shall not be limited to the defined minimum and are entitled to higher clear floor to ceiling height on the ground floor level as desired up to a maximum of twenty feet (20 ft)[†]. Where additional height is provided beyond the fourteen foot (14 ft) minimum, the building shall be permitted an additional amount of building height allowance relative to the final height established for clear floor to ceiling height.
- 0000.3 The allowances provided through S. 0000.1 and 0000.2 are illustrated in Figure 0.1 for further clarity.

Figure 0.1: Minimum and Maximum Clear Ground Floor Ceiling Heights and Associated Building Height Allowances



[†] The identified 20' standard is an assumption based on the highest possible reasonable allowance. The intent of the language is intended to represent the potential for a sliding scale as opposed to a fixed standard, which could be more limiting and subject to request for special exception. The optimal 'maximum' standard should be based on further retail market research and final application should be based on local commercial area considerations.

5.3 Working Group Comments on Recommendations:

The proposal of the 14 foot minimum standard for a clear floor to ceiling height was generally accepted as a good baseline for the restriction of minimum clear floor to ceiling heights with respect to new construction. This was indicated through working group discussions and the solicitation of feedback from certain participants involved in the development of the District of Columbia's Retail Action Strategy.

Although the minimum was supported, there were concerns expressed regarding providing any allowances beyond any matter of right standard and the potential for a sliding scale. Additional concerns were also expressed in regard to other related Height regulations, specifically those associated with Historic Districts.

The current experience in relation to the application of the 14 foot minimum clear floor to ceiling height standard and associated height allowance has proven to be effective in achieving its intent. The application of the 14 foot minimum restriction, results in a minor allowance in addition to overall height of a building (five feet). Adjusting the minimum standard to a sliding scale – up to a maximum of 20 feet – would allow for up to 11 ft in additional permitted height – an effective full building story. Such an allowance may be considered inappropriate in many instances.

What would be advisable would be to establish the maximum desirable limit based on research related to current national retail market demands. The basic intent of providing a minimum and a maximum would be to ensure flexibility where a particular desired use (i.e.: grocery store) may require additional height beyond the 14 foot minimum, while still providing the overall building height allowance. Where the final height is established should ultimately be contextually based, depending on local retail market area characteristics and desired improvement strategies.

Again, where regulations are in places that have a higher regulatory enforcement power than the zoning regulations (i.e.: Historic Preservation Districts), those existing powers shall prevail.

Recommendation 6: Develop, Revise and Maintain Consistent Development Standards Related to Ground Floor Retail continuity and Active Street Fronts:

- a) *Establish and Maintain Development Standards that ensure that new Ground Floor Space is active retail/window space.*
- b) *Establish Development Standards that restrict a minimum amount of access points relative to building frontage.*
- c) *Establish maximum standards for Office or Residential Lobby entrances relative to overall frontages.*

Supporting Policies and/or Action Items:
<i>Policy ED- 2.2.2: Downtown Shopping</i>
<i>Policy ED-3.1.1: Neighborhood Commercial Vitality</i>
<i>Policy UD-3.1.7: Improving the Street Environment</i>

6.1 Concept and Rationale:

Within the body of the existing District of Columbia zoning regulations, and in development, are regulations related to ensuring retail continuity or active street fronts. In addition to this work there is more recent work, again related to the Hill East redevelopment plan, which supports this goal.

Maintaining and developing these types of development standards were of key concern to members of the Working Group and are proven and effective means of ensuring the reduction of negative impacts associated with inappropriately functioning retail street-walls. These standards should be recognized and serve as tools to be used city-wide, as applicable, to maintain active street frontages.

Further reference to the types of standards identified above, regulatory requirements and examples are provided below.

Supporting Working Group and Public Feedback

- *Consider requiring percentage of ground floor space be used for retail or food uses-not law firm lobbies, banks health facilities etc.*
- *Restrict the amount of ground-level street frontage per individual retail user. To promote user mix, regulations should promote something like a maximum of 25' frontage for all users up to 2,500 square feet + 1' of additional frontage for per each additional 100 square feet Perhaps a special exception should be instituted in situation like existing corner row houses, which typically have a short front on one street and a long front on another.*
- *Restrict the amount of blank ground-level street frontage- either walls or covered-over windows (CVS, law firms etc.).*

- *The current overlay district regulations are too restrictive and that if we want to create vibrant successful businesses, we need incentives to get the things we want.*
- *Concerns about vacant space were raised:-we must be conscious of property owners with 'patient money' who hold vacant properties until particular type of tenant surfaces.*
- *Ground level should be built properly for retail.*
- *Requirements on ground-level and window conditions, such as opacity, should be examined.*
- *Explore instituting mechanism to ensure neighborhood serving retail is not priced out in areas where available space for neighborhood retail venues are above what can be supported (Friendship Heights on DC side). Permanently dividing space into smaller spaces would be more conducive to small start up and deter national chains.*
- *Need a mechanism to ensure that there is neighborhood serving retail in parts of the city where the market prices retail space above what can be supported by retail serving the community.*
- *Facilitate interactivity on the streets.*

6.2 Regulatory Requirements and Examples:

Outlined below are examples from the existing ordinance and the proposed Hill East regulations that fulfill the desired intent of ensuring active street-walls and street frontage space.

The Downtown Development overlay district utilizes a restriction on surface area of any street-wall to maintain active retail/window space and to restrict minimum access points to the building:

- 1701.3 Along defined street frontages, not less than fifty percent (50 %) of the surface area of any street-wall at the ground level of each building shall be devoted to display windows and to entrances to commercial buildings or to the building; provided:
- a) The windows shall use clear or low emissivity glass, except for decorative or architectural accent;
 - b) Entrances to the building, excluding vehicular entrances, shall be separated by not more than fifty feet (50 ft.) on average for the linear frontage of the building.

The Neighborhood Commercial Overlay district provides language more specific to the provision of appropriate uses at the ground floor level of the building:

- 1302.4 The identified designated uses shall occupy no less than fifty percent (50 %) of the gross floor area of the ground level of the building, subject to the following requirements:
- a) No more than twenty percent (20%) of the ground level floor area shall be devoted to banks, loan offices or other financial institutions, travel agencies or other ticket offices.

The draft Hill East regulations contain similar standards, specifically:

- 2815.6 The street facing facades of buildings on primary streets shall devote not less than fifty (50) percent of the length and 50% of the surface area of the street wall at the ground level to windows associated with preferred uses or windows associated with building entrances.
- 2814.6 Buildings shall incorporate vertical elements to create a series of storefront-type bays with entrances that are no more than 50 feet apart.
- 2814.11 Street-facing facades shall not have blank walls (without doors or windows) greater than 10 feet in length.
- 2815.6 Entrances shall be no more than fifty (50) feet apart and recessed no more than six (6) feet deep or ten (10) feet wide.

Additional regulatory requirements that would further fulfill the intent of these types of regulations would be:

- Clarifying that any lobby space dedicated to serving upper floor office or residential uses shall not be counted towards the required 50 % that would be devoted toward active frontage space, or street level building entrances.
- Adjusting the 50% surface area standard and the 50 ft entry point standard relative to the context within which it is applied. (Generally the intent would be to be more restrictive, requiring a greater surface area and less space between entry points.)
- Preparing graphics and definitions to further support and clarify all standard terms (i.e.: 'surface area of street-wall') and associated requirements.
- Ensure through revision and updates to Neighborhood Commercial Overlay Districts that requirements for Ground Floor Retail identified above (S. 1302.4) ensure location on or along Street Frontage of space.

6.3 Working Group Comments on Recommendations:

Although specific language was not determined, the general tone of the working group seemed to overwhelmingly favor regulations that would aggressively ensure active street-walls on the ground level throughout all retail areas. The degree to which ground-level frontage should be regulated would vary depending on the needs and desires of the specific area.

The input ranged from specific examples as detailed in the Hill East regulations - *not less than fifty percent (50 %) of the surface area of any street-wall at the ground level of each building shall be devoted to display windows and to entrances to commercial buildings or to the building (§1701.3)* - to more generic comments - *ground level retail frontage should not allow any “blank” space at all.* The working group highlighted the need to clearly define what “blank” space means and the importance of recognizing building compliance considerations.

Other topics of concern were raised during the feedback discussion. These included the role and placement of signage, awnings and other visual components. It was determined that such topics are beyond the scope of the zoning review process, but should be recognized for future policy discussion and development.

Recommendation 7: Establish Ground Floor Retail adaptability development standards to ensure establishment of new retail space that would allow for long-term utilization by smaller businesses, but that would not prohibit occupancy by larger retail tenants.

Supporting Policies and/or Action Items:
<i>Policy ED- 2.2.3: Neighborhood Shopping</i>
<i>Policy ED-2.2.4: Destination Retailing</i>
<i>Policy ED-2.2.5: Business Mix</i>
<i>Policy ED-3.1.1: Neighborhood Commercial Vitality</i>
<i>Policy ED-3.2.1: Small Business Retention and Growth</i>
<i>Policy UD-2.2.2: Areas of Strong Architectural Character</i>
<i>Policy UD-2.2.8: Large Site Development</i>
<i>Policy UD-3.1.7: Improving the Street Environment</i>

7.1 Concept and Rationale:

Although current regulations may restrict the total quantity of retail space required as a component of a development project, it is important to recognize the need for that space to serve a wide variety of tenants in terms of scale. Requiring that newly developed retail space be **adaptable** to serve either large scale or small scale tenants will ensure that the District’s retail supply base can address changes in retail markets over time.

Such development standards could be established as follows: a baseline standard would be determined for the maximum width of desired local retail space, within a defined permitted Ground Floor Retail area. This standard would be the basis for requiring that the ground floor level of new buildings be able to be divisible over time into spaces that meet the minimum standard. The entire space would still be able to be consolidated into a single occupancy at the desire of the building owner based on real estate demands.

Such a development standard would ensure that new retail spaces could adapt to a variety of potential future market demands for retail space. There would be an assurance that regardless of current demands that there would be a long term supply of start-up or small scale space. Adaptable building standards would also maintain urban design policies intended to ensure that a 'fine-urban grain' is maintained and that the street environment is maintained as an active space.

Further explanation and details are provided through the regulatory requirements, sample regulation and diagrams below.

Supporting Excerpts from Working Group and Public Feedback:

- *Restrict the amount of ground-level street frontage per individual retail user. To promote user mix, regulations should promote something like a maximum of 25' frontage for all users up to 2,500 square feet + 1' of additional frontage for per each additional 100 square feet. Perhaps a special exception should be instituted in situation like existing corner row houses, which typically have a short front on one street and a long front on another.*
- *Explore instituting mechanism to ensure neighborhood serving retail is not priced out in areas where available space for neighborhood retail venues are above what can be supported (Friendship Heights on DC side). Permanently dividing space into smaller spaces would be more conducive to small start up and deter national chains. Need a mechanism to ensure that there is neighborhood serving retail in parts of the city where the market prices retail space above what can be supported by retail serving the community.*
- *Facilitate interactivity on the streets.*
- *Develop a broad strategy that will encourage a balanced mix of large and small retail uses everywhere but create incentives to encourage small businesses. We should encourage people to have a longer-term vision since retail trends change over time and our current ordinance is 50 years old.*
- *Encourage 'serendipitous' moments in the City. Encourage pedestrian traffic in general.*
- *Create opportunities for entrepreneurship for existing neighborhood residents and ensure resident retention.*
- *Zoning should not be a barrier to facilitating Retail uses. It should be more positive force in achieving our desired ends and its purpose.*
- *Zoning regulations must recognize the need for balance between local business and national chains.*

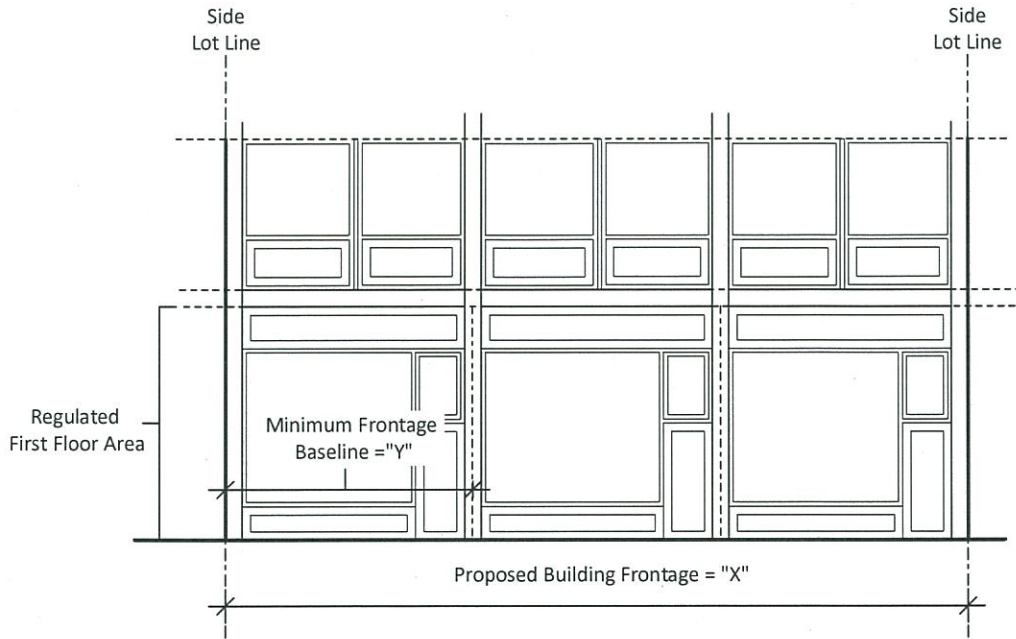
7.2 Regulatory Requirements and Examples:

Identified below is an example of language that could be used as a means of requiring adaptable building frontages where new construction is taking place in a defined commercial district.

Proposed Retail Frontage Adaptability Language

- 0000.1 Where a building is to be reconstructed along designated street square frontages, it shall be required to maintain the first floor level as adaptable retail frontage.
- 0000.2 Adaptability shall be maintained by ensuring that ground floor retail space can be divided into smaller retail frontage spaces based on a defined standard for the designated area.
- 0000.3 Compliance with 0000.2 shall be achieved through building plans that:
- a) allow for servicing (plumbing and mechanical) to individual tenants; and
 - b) that do not propose permanent frontage construction that would prohibit the division of the entire Ground Floor Retail building frontage into smaller units.
- 0000.4 The determination of the Minimum Number of Frontage Units shall be based on the following formula and is further illustrated in Figure 0.1 below.
- The proposed building frontage shall be established and defined as the “X” variable. “X” shall be divided by “Y”, the defined Minimum Frontage Baseline as identified in section 0000.7 below, to establish “Z”: the Minimum Number of Frontage Units.
- Where “Z” is a fraction it shall be rounded down to the next nearest whole number. Where this reduced whole number value is not viable based on structural requirements, the “Z” number shall be allowed to be reduced to the next nearest number that is.
- 0000.5 The requirements of section 0000.2 as a result of the determined amount of Minimum Number of Frontage Units identified through Section 0000.4 shall *not* prohibit the occupancy of ground floor retail space by a single occupant or multiple occupants that are less than the defined Minimum Number of Frontage Units.
- 0000.6 These retail adaptability development standards shall apply only to the First Floor Area as identified on Figure 0.1 below.
- 0000.7 The Minimum Frontage Baseline (or “Y”) shall be fifteen feet (15 ft).

Figure 0.1: Adaptable Building Frontage Division Formula Illustration



"X" divided by "Y" = "Z" or the Minimum Number of Frontage Units.
"Z" value shall be rounded down to the next nearest whole number, or
the next whole number that is viable based on structural requirements.

When developing regulations related to retail space adaptability the following considerations would also have to be recognized:

- Corner lot situations and associated allowance requirements;
- That the regulations discussed in Recommendation 6.0 would be recognized to ensure no conflict and joint applicability of both standards desired ends;
- The minimum frontage baseline would be based on specific commercial district where adaptability development standard is being applied.

7.3 Working Group Comments on Recommendations:

The concept of creating ground floor adaptability development standards was generally received positively by the Working Group. For new construction, however, the working group drew attention to the need to clarify a distinction between façade adaptability (e.g.: window /divider placement) and internal function space adaptability (e.g.: plumbing arrangement, column placement). In either or both cases, a full understanding of the resulting implications of such a standard is necessary.

The idea of not making the adaptability piece a mandate but rather an incentive option was also raised due to cost concerns associated with requiring developers to fulfill such a standard. Additional concerns were also raised regarding the need to have a comprehensive knowledge base of the potential external impacts that may result due to the application of an adaptability standard.

Deferred Items for Future Working Groups and Policy Development

Through the discussions of the Retail Strategy Working Group many issues were identified that are considered to be very relevant to the impact of the success of retail business within the District of Columbia. However, many of these items are recognized here as a starting point for future discussions in other commercial oriented working groups. In addition there were ideas that were not within the specific scope of zoning regulations, but should be recognized for future fiscal, regulatory and/or administrative policy development.

Recommendation 8: Ensure through Commercial Corridor Working Group discussions that the following regulatory problems in relation to the C2A zone and other commercial zones are addressed:

- ***FAR allocations between Commercial and Residential Use, need to better address real estate economics.***
- ***Lot Occupancy standards and setback requirements need to be consistent with policy goals. There should not be a varying standard of ground floor occupancy based on whether a residential or commercial use is proposed.***
- ***Development Standards – particularly set-backs and lot occupancy should recognize the importance of grocery uses and should not restrict building depth and lot area so as to prohibit desired ends.***

Supporting Policies and/or Action Items:
<i>Policy ED-2.2.6: Grocery Stores and Supermarkets</i>

8.1 Rationale:

Through Working Group discussions and solicitation of public feedback through the District of Columbia Zoning Update Web-Site it became quite apparent that there were deficiencies regarding the C2A Zoning District and its application of FAR and development standards.

The development and placement of grocery stores in commercial areas was also identified as a critical issue to meeting the needs of local commercial district populations and establishing an overall balanced retail mixture.

Because these issues and standards are interrelated with larger Commercial corridor regulatory guidelines it was decided that it would be most practical to address these problems within the context of the Commercial Corridor Working Group discussions.

Supporting Excerpts from Working Group and Public Feedback:

- *Zoning should not be a barrier to facilitating Retail uses. It should be more positive force in achieving our desired ends and its purpose.*
- *Consider increasing density in areas where current permitted density is too low to support retail (such as 12th Street in Brookland).*
- *C-2-A does not seem to produce the ground level retail with housing above that it was supposed to. Perhaps not enough density to compensate for loss of usable space for residential, given the need for tow means of access/ egress.*
- *Consider ridding the rear yard requirement in C-2-A (especially where there are 30 foot alleys).*
- *Review the effectiveness of the lot occupancy requirements of C-2-A (currently 80% for commercial and 60% for residential).*
- *C-2-A and C-1 should have lower lot occupancy to encourage the provision of parking in rear.*
- *The difficulty in providing “space” to tenants in neighborhoods is the floor plans tend to be quite small. Zoning relief regarding first floor lot occupancy would be helpful.*

Recommendation 9: Recognize and utilize guidance, ideas and observations provided through the Retail Working Group as foundation for discussion topics regarding Commercial Corridor and Downtown Working Groups.

9.1 Concept and Rationale:

Many ideas, principles, general discussion items and questions – although very relevant to the overall success of retail commerce within the District – were deemed to be more relevant to larger discussions regarding both the Commercial Corridor and Downtown Working Groups and general public policy initiatives. The items identified below should frame the discussion regarding bigger land use planning issues and wider policy development discussions, including future Comprehensive Plan Policy and Action Items.

Guiding principles:

- Need to build regulations consistent with Public Transportation and associated plans.
- When talking about density in relation to retail we should be talking about people as opposed to building standards.

Ideas:

- New development should be used to subsidize the development of affordable retail space with tools like Transferable Development Rights.
- Permission should be provided to allow retail into new areas such as side-streets off of existing main streets to address existing high rental rates on main streets.
- There should be some form of penalties associated with maintaining a vacant store front.
- There should be some manner of facilitating the temporary use of vacant retail space.
- Some form of tool should be considered that would enable ownership of retail space (i.e.: condo retail).
- Establish tool for measuring, maintaining and regulating an adequate mix of retail use types based on defined geographic goals. Tool could be utilized when allocating development bonus benefits associated with incentive programs and when considering Special Exceptions or Zoning Commission Approval on proposals.
- Establish tool for measuring the characteristics of retail space types (i.e.: heights, frontage size). Tool should utilize same methodology national retail space inventorying and analysis.
- Establish Development Bonus Incentive Program targeted to long-term affordable leaseable retail development, creation of condo retail, condo live/work retail, incubator space, grocery store space and common parking facilities. Program should focus on creating partnerships between development community and certified local economic development agencies with a mandate toward small business development.
- When dealing with Planned Unit Development proposals where a retail use is a required component of the PUD process, Certificate's of Occupancy should not be issued until a retailer is secured as a tenant.
- Where does signage fit in to overall regulatory regime – in relation to Retail?
- Where do other visual components – i.e. awnings – integrate into overall zoning discussion?
- A key factor in ensuring the establishment of small business incubators – which may be retail based – is to recognize an incubator through some form of use permission. This would also be valuable should there be a desire to transfer some form of financial benefit to an incubation type use as a part of any municipal fiscal programs.
- Although not within the specific scope of zoning regulations, participants expressed interest in facilitating – by whatever possible means – programs to improve existing 'blank' building areas, or underutilized window spaces.

Questions and General Observations:

- Is there a place for local retailers based on the current marketplace? We need to recognize the relationship to renovation and re-investment – which is needed – and the inherent associated rent increases. We need to understand why retail is unaffordable to determine if and how we can address it through zoning.
- How can we use office space to drive retail?
- How can we use Zoning to facilitate the creation of retail nodes?
- We need to understand how much ‘workers’ and ‘visitors’ make up in terms of density if we are to capitalize on them as a market. We need to understand how much ‘human density’ exists in areas during the day vs. the night. We need to recognize (where applicable) the differences between Federal employees and Private employees when it comes to retail.
- How do we use Zoning to address the problem where areas have an oversupply of retail space relative to the existing surrounding market base?
- How can Zoning be used to facilitate local shopping to prevent having to drive and spend elsewhere?
- How can we utilize the population density associated with the large visitor base that comes to DC in the form of workers and regional and national visitors?

